



**U S Army Corps
of Engineers**
Huntington District

Public Notice

In reply refer to Public Notice No.

200501224

Issuance Date:

February 21, 2006

Stream:

Toms Fork of Cabin Creek

Closing Date:

March 23, 2006

Please address all comments and inquiries to:

U.S. Army Corps of Engineers, Huntington District

ATTN: CELRH-OR-F Public Notice No. (*reference above*)

502 Eighth Street

Huntington, West Virginia 25701-2070

Phone: (304) 399-5210

PUBLIC NOTICE: The purpose of this public notice is to inform you of a proposal for work in which you might be interested. It is also to solicit your comments and information to better enable us to make a reasonable decision on factors affecting the public interest. We hope you will participate in this process.

REGULATORY PROGRAM: Since its early history, the U.S. Army Corps of Engineers (Corps) has played an important role in the development of the nation's water resources. Originally, this involved construction of harbor fortifications and coastal defenses. Later duties included the improvement of waterways to provide avenues of commerce. An important part of our mission today is the protection of the nation's waterways through the administration of the Corps Regulatory Program.

SECTION 404: The Corps is directed by Congress under Section 404 of the Clean Water Act (33 USC 1344) to regulate the discharge of dredged and fill material into all waters of the United States, including wetlands. The intent of the law is to protect the nation's waters from the indiscriminate discharge of material capable of causing pollution and to restore and maintain their chemical, physical and biological integrity.

TO WHOM IT MAY CONCERN: The following application has been submitted for a Department of the Army Permit under the provisions of Section 404 of the Clean Water Act. This notice serves as the Corps of Engineers' request to the West Virginia Department of Environmental Protection to act on Section 401 Water Quality Certification for the following application.

APPLICANT: Catenary Coal Company
5914 Cabin Creek Road
Eksdale, WV 25075

LOCATION: The proposed project would be located in Toms Fork of Cabin Creek of the Kanawha River, 1 mile southwest of Leewood, in Kanawha County, West Virginia (latitude 38° 03' 30" and longitude 81° 27' 52"). **Drawing No. 1** depicts the location and extent of jurisdictional impacts for the proposed project. A Site Plan is provided in **Drawing No. 2** and **Drawing Nos. 3-5** provide details for proposed impacts.

DESCRIPTION OF THE PROPOSED WORK: The applicant proposes to place fill material into waters of the U.S. in conjunction with a deep mine face-up entry portal associated with the Hernshaw No. 1 Deep Mine. Approximately 1,200 linear feet of Toms Creek would be diverted and enclosed in two 72" diameter corrugated metal pipes to allow construction of the Topsoil Storage Fill (TF-1) to provide spoil storage. Pond TF-1 would be located downstream of the proposed fill and would impact 725 linear feet of Toms Creek. In addition an 8' x 10' concrete box culvert installed under Access Road TF-1A would impact 90 linear feet of stream. A total of 2,015 linear feet of perennial stream would be impacted by the proposed project. All impacts would be temporary and the proposed project would have an expected duration of seven years.

The purpose of the project would be to deep mine coal reserves. The indicated reason for impacts to jurisdictional waters is to provide storage of excess overburden material generated during construction of the portal area, access road, conveyor system, haul road, temporary stream enclosure and diversion and the construction of a temporary sediment pond to minimize contributions of sediment to the receiving stream.

Benthic macroinvertebrate survey data was used to determine the West Virginia Stream Condition Index (WVSCI). From a five sampling sites, three scores were classified as "fair" and two scores were classified as "poor". The West Virginia Department of Environmental Protection (WVDEP) Cumulative Hydrological Impact Assessment (CHIA) indicates the has been previously impacted by extensive mining and related activities. Although water quality is generally good, impacts by pre-law mining combined with current mining activities have impaired area streams. As a result, it is not anticipated the proposed project would result in adverse effects. In accordance with the U. S. Environmental Protection Agency's "Rapid Bioassessment Protocols For Use In Streams and Wadeable Rivers", Sturm Environmental Services performed a habitat assessment of the stream using the same five sampling sites. The habitat assessment resulted in four "marginal" and one "suboptimal" score. The Surface Water Runoff Analysis (SWROA) provided by Empire Consulting, Inc. indicates based upon a 25 year/24 hour storm event the "during mining" and "after mining" conditions from peak discharges would not exceed existing pre-mining peak discharges.

The WVDEP has authorized the proposed mining operation by Article 3 Permit No. U-3008-03 issued May 17, 2004, pursuant to the Surface Mining Control and Reclamation Act (SMCRA) of 1977. Article 11 National Pollutant Discharge Elimination System (NPDES) Permit No. WV1021621 was issued by the WVDEP on January 13, 2005.

ALTERNATIVE ANALYSIS: This project is not considered to be water dependent; therefore, the applicant is required to show that other less damaging practicable alternatives are not available that would achieve the applicant's goal. The applicant has submitted an alternatives analysis, which is currently under review.

MITIGATION PLAN: The applicant has submitted a compensatory mitigation plan (CMP) to compensate for temporary impacts to waters of the U. S. regulated by the Department of the Army, Corps of Engineers. The applicant proposes on-site in-kind mitigation through restoration and enhancement of all temporary impact sites. All restoration and enhancement would be accomplished using natural stream design techniques. Riparian buffer zones extending 25 feet from each stream bank would be re-established with native vegetation. The applicant proposes monitoring of completed mitigation sites for a minimum of five years. To ensure there is no net

loss of qualitative impacts, the applicant has utilized Stream Habitat Unit (SHU) calculations to assign qualitative values to proposed impacts and mitigation. Impacts associated with the proposed project would result in the loss of 23.011 SHUs and mitigation would result a gain of 16.416 SHUs, a net loss of 5.215 SHUs. The applicant proposes to use 5.215 SHUs credit gained from the White Oak Creek Enhancement Project associated with the Kayford South Surface Mine (S-3008-00), Corps Authorization 199800372-4, to compensate to the net qualitative loss. The applicant is negotiating with the landowner to obtain perpetual deed restrictions for the mitigation sites.

WATER QUALITY CERTIFICATION: A Section 401 Water Quality Certification is required for this project. It is the applicant's responsibility to obtain certification from the West Virginia Department of Environmental Protection.

HISTORIC AND CULTURAL RESOURCES: The National Register of Historic Places (NRHP) has been consulted and it has been determined there are no properties currently listed on the register that are in the area affected by the project. This public notice serves as coordination with the State Historic Preservation Officer regarding historic properties. If the West Virginia Division of Culture and History (WVDCH) believe any potential effects to historic properties may result from the proposed permitting action, we request the WVDCH provide information to this office pursuant to Section 106 of the National Historic Preservation Act.

It should be acknowledged previous correspondence, dated July 3, 2002 (FR No. 02-825-KA-1), received from the WVDCH under the SMCRA indicated no known historical, architectural or archaeological sites listed on or eligible for inclusion in the National Register of Historic Places would be affected by this project. It is requested the WVDCH advise this office of their present findings.

ENDANGERED/THREATENED SPECIES REVIEW: This public notice also serves as coordination with the U. S. Fish and Wildlife Service (USFWS) regarding threatened or endangered species. If the Service believes any potential effects to federally listed species would be attributable to the Huntington District's proposed permitting action, we request the Service provide any additional information pursuant to Section 7(c) of the Endangered Species Act of 1972 (as amended).

It should be acknowledged the USFWS furnished a letter to the applicant dated March 31, 2004, regarding the proposed project and the potential effect on the potential existence or habitat of the Indiana (*Myotis sodalis*) bat. According to the information provided, it was determined there are no open mine portals at the site, 70-75% of the area within a two-mile radius would provide summer habitat and timber would be removed between November 15 and March 31. It was concluded no federally listed endangered and threatened species are expected to be impacted by the project. It is requested the USFWS advise this office of their present findings.

PUBLIC INTEREST REVIEW AND COMMENT: Any person who has an interest that may be adversely affected by the issuance of a permit may request a public hearing. The request must be submitted in writing to the District Engineer on or before the expiration date of this notice and must clearly set forth the interest which may be adversely affected and the manner in which the interest may be adversely affected by the activity.

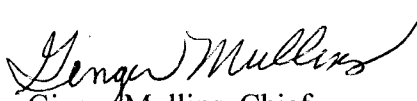
Interested parties are invited to state any objections they may have to the proposed work. The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit that reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors that may be relevant to the proposal will be considered including the cumulative effects thereof; of those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership and, in general, the needs and welfare of the people. In addition, the evaluation of the impact of the activity on the public interest will include application of the guidelines promulgated by the Administrator, Environmental Protection Agency, under the authority of Section 404(b) of the Clean Water Act. Written statements on these factors received in this office on or before the expiration date of this public notice will become a part of the record and will be considered in the final determination. A permit will be granted unless its issuance is found to be contrary to the public interest.

The Corps of Engineers is soliciting comments from the public; Federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

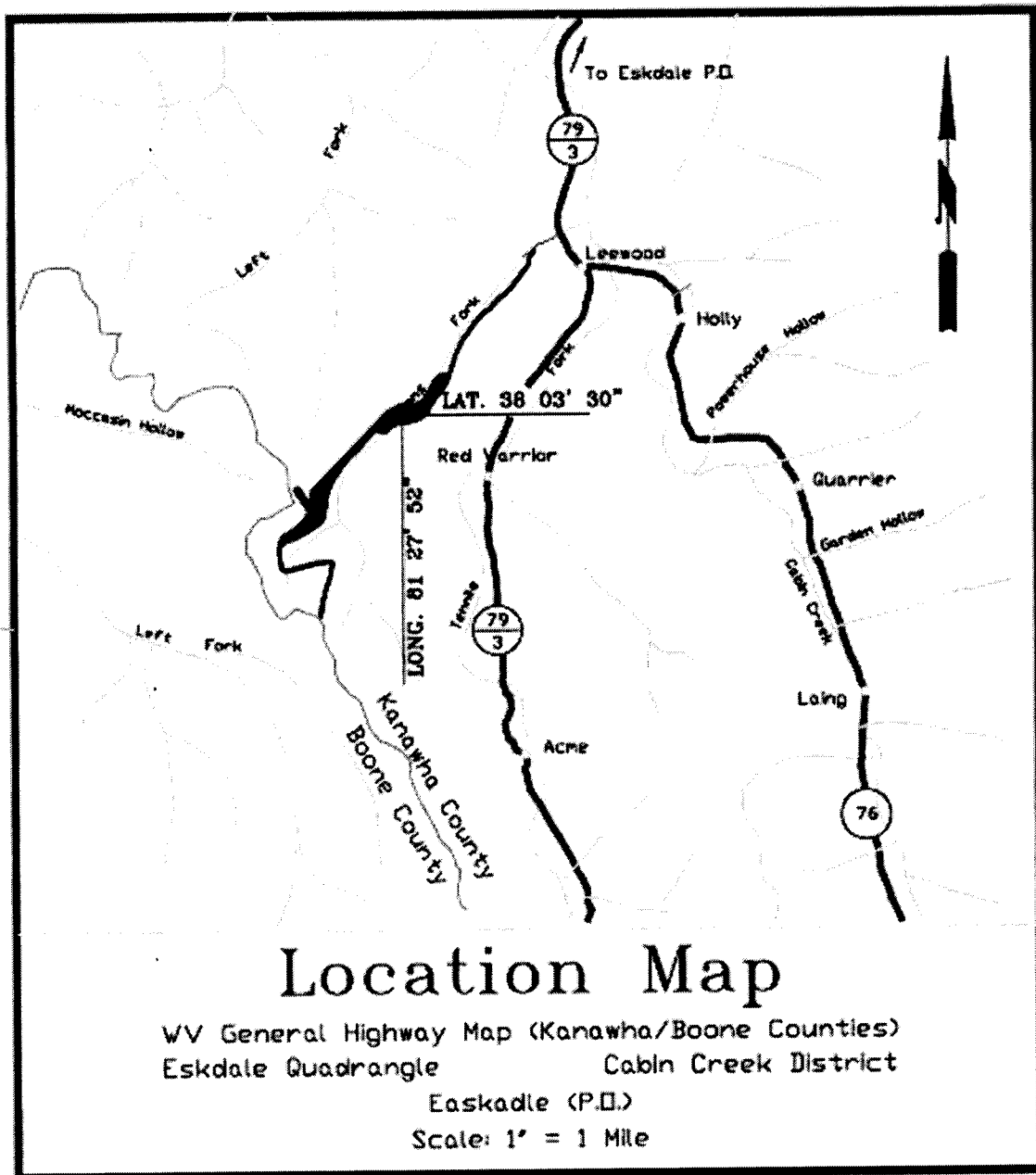
Persons wishing to submit comments, objections or requests for public hearings concerning the Corps of Engineers permit should write:

U. S. Army Corps of Engineers
ATTN: CEORH-OR-F Public Notice No. **200501224**
502 Eighth Street
Huntington, West Virginia 25701-2070

If you have any questions concerning this public notice, please call Richard Hemann of the South Regulatory Section at 304-399-5710.

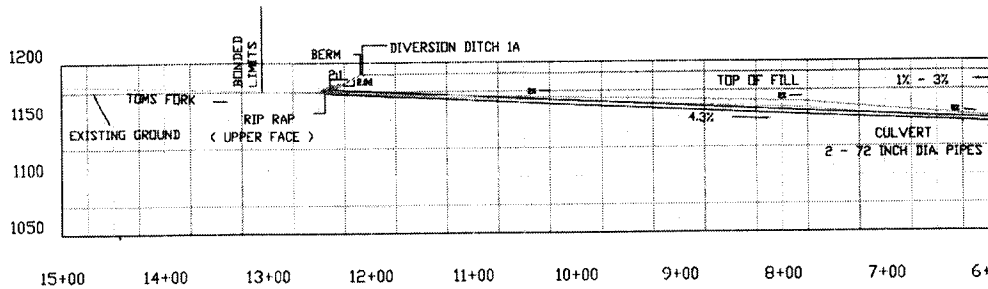
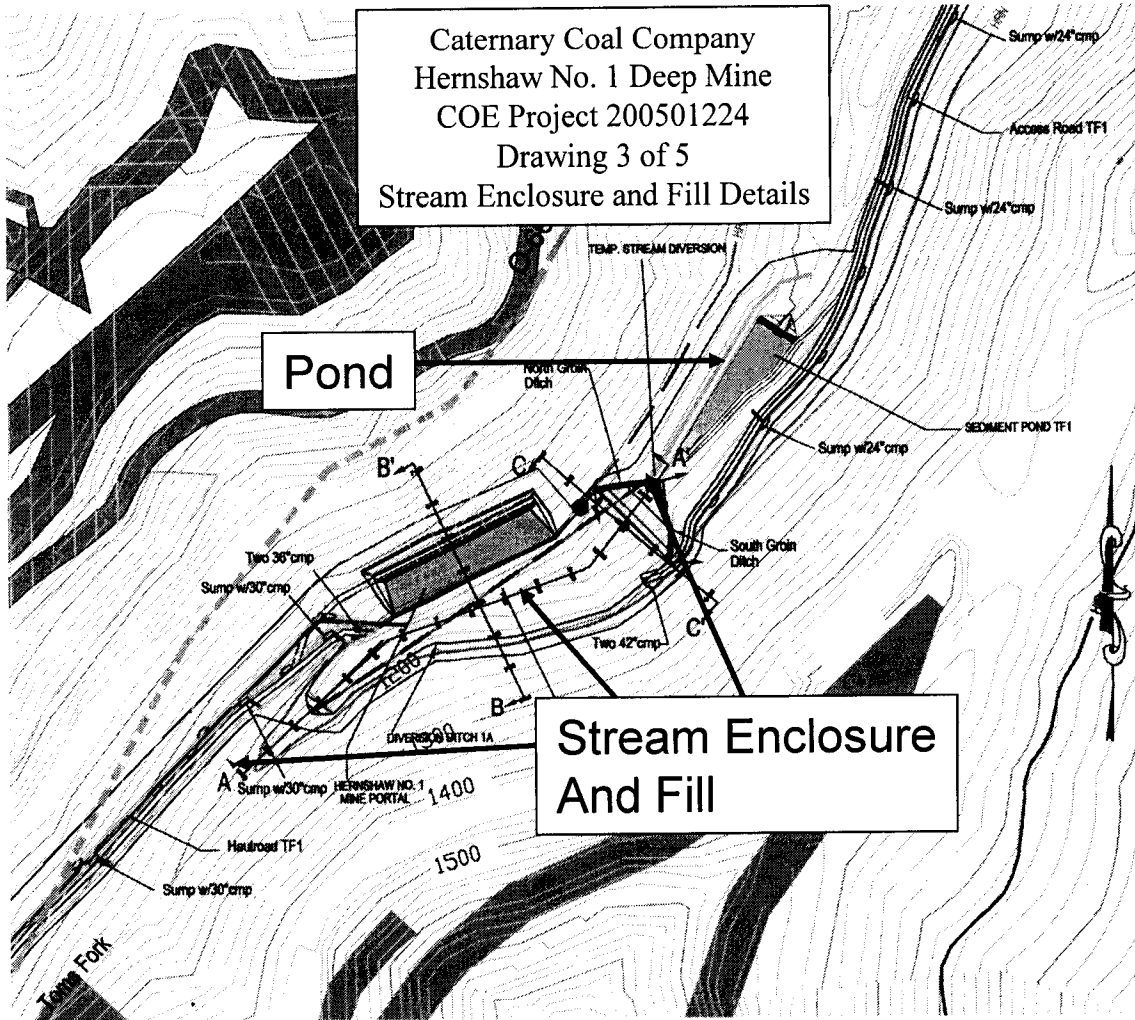

Ginger Mullins, Chief
Regulatory Branch

(W)

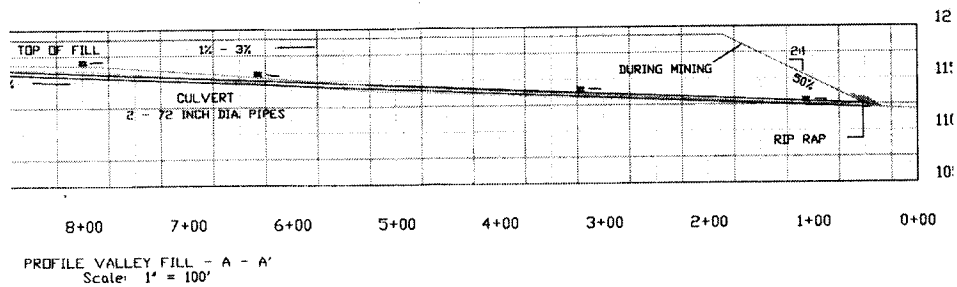


Caternary Coal Company
Hernshaw No. 1 Deep Mine
COE Project 200501224
Drawing 1 of 5
Location Map

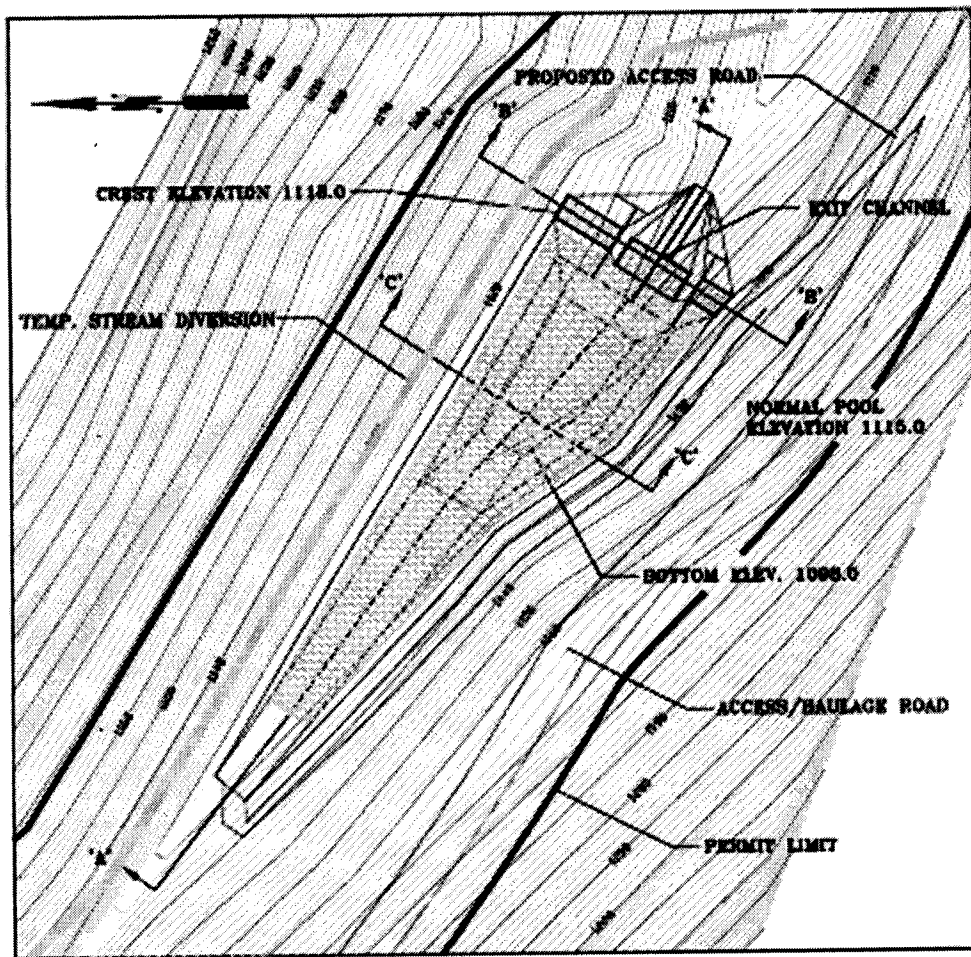
Caternary Coal Company
Hernshaw No. 1 Deep Mine
COE Project 200501224
Drawing 3 of 5
Stream Enclosure and Fill Details



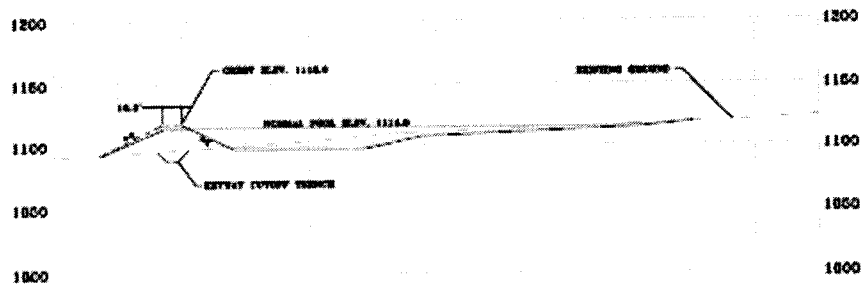
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Fill Cross-Section A-A

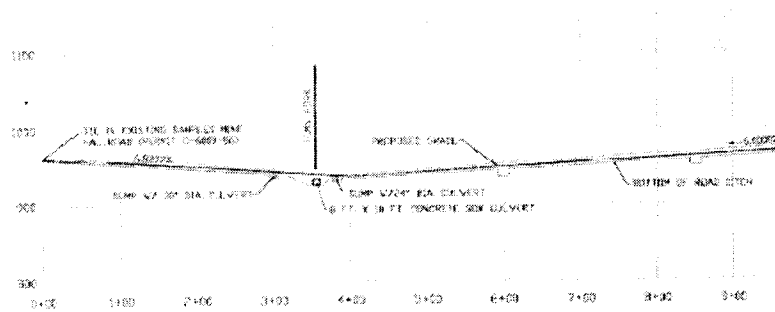
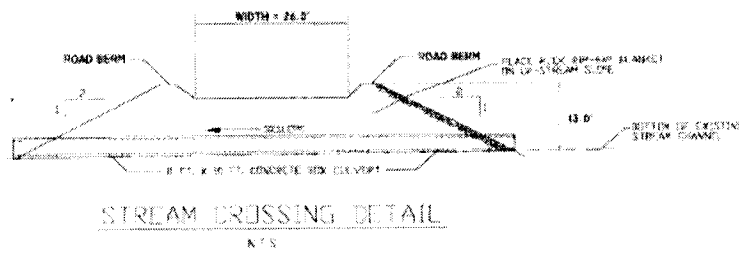
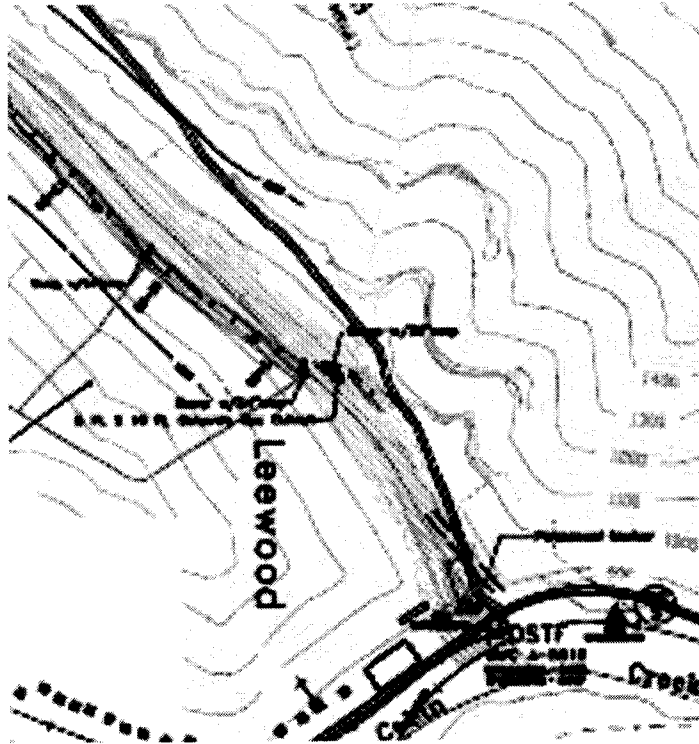


PLAN VIEW



CROSS-SECTION 'A-A'

Caternary Coal Company
Hernshaw No. 1 Deep Mine
COE Project 200501224
Drawing 4 of 5
Pond Details



Caternary Coal Company
Hernshaw No. 1 Deep Mine
COE Project 200501224
Drawing 5 of 5
Crossing Details